

## REMARKS

This is a Response to the non-final Office Action mailed on July 20, 2010. No fee is due in connection with this Response. The Director is authorized to any fees that may be required, or to credit any overpayment to Deposit Account No. 02-1818. If such a withdrawal is made, please indicate the Attorney Docket No. 3712161-98 on the account statement.

Applicants appreciate the courtesies extended by Examiner Bekker during an interview on August 17, 2010 with Applicants' representative. The comments appearing herein are substantially in accord with those presented and discussed during the interview.

Claims 1, 6, 8, 14-15 and 19-23 are pending in this application. Claims 2-5, 7, 9-13 and 16-18 were previously canceled. In the Office Action, Claim 14 is rejected under 35 U.S.C. §112; and Claims 1, 6, 8, 14-15 and 19-23 are rejected under 35 U.S.C. §103. In response, Claim 23 has been amended, Claims 1, 6, 8, 14-15 and 19-22 have been canceled, and Claims 24-31 have been added. The amendments do not add new matter. In view of the amendments and/or for the reasons set forth below, Applicants respectfully submit that the rejections should be withdrawn and the application now passed to allowance.

Claims 1, 6, 8, 14-15 and 19-22 have been canceled without disclaimer thereby rendering moot the rejections of the claims. Applicants reserve the right to file one or more continuation applications directed to the canceled claims. Applicants have further amended the specification to correct a mistranslation of the earlier filed priority application, WO 2004/056192, which was translated from German.

In the Office Action, Claim 23 is rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,262,191 to Chakraborty et al. ("*Chakraborty*") in view of the printed publication to Fennema ("*Fennema*") and the printed publication to Hui ("*Hui*"). Applicants respectfully traverse the rejection for at least the reasons set forth below.

Applicants have amended independent Claim 23 to recite, in part, a candy having a starch matrix comprising a first starch comprising a modified starch having a DP<sub>n</sub> of more than 1000, wherein the modified starch is selected from the group consisting of acetylated starches, hydroxypropylated starches, hydroxyethylated starches, phosphorylated starches, acetylated distarch phosphates, hydroxypropylated distarch phosphates, hydroxyethylated distarch phosphates, phosphorylated distarch phosphates, acetylated distarch adipates, hydroxypropylated

distarch adipates, hydroxyethylated distarch adipates, phosphorylated distarch adipates and combinations thereof. The amendments are supported in the specification, for example, at page 11, lines 7-12. The specification teaches that the corresponding starches" (i.e., acetylated starches ...) can be additionally cross linked chemically (e.g., distarch phosphate, distarch adipate).

Applicants have further amended Claim 23 to recite, in part, that the second starch has an amylose content of more than 30% and a DPn of less than 300. The amendment is supported in the specification, for example, at page 12, lines 14-15.

The effect of plasticizer and the second starch (i.e., NS) on the modulus of elasticity is shown in semilogarithmic form in FIG. 9 (along with Table 1) of Applicants' specification for formulations based on acetylated distarch adipate of waxy corn. The formulations containing NS have a modulus of elasticity plateau, which, in the case of GB11/2 extends over a wide range of relative humidities of about 35%. On the other hand, formulations without NS show only a flattening of the modulus of elasticity in the plateau regions. Here also, the stabilizing effect of the network is expressed once again and, in these cases, includes heterocrystallites at least partially.

It becomes clear that, by means of a variation of the plasticizer content, on the one hand, a translation along the relative humidity axis is initiated. On the other hand, for the formulations containing a portion of NS, a translation along the modulus of elasticity axis is also associated, the level of the modulus of elasticity varying by a factor of up to 20. Accordingly, the modulus of elasticity curve can be placed within a wide range of the modulus of elasticity/relative humidity diagram by selecting the plasticizer content, as a result of which one possibility is provided for adjusting the rubber-elastic textures desired from hard (GB11/2) to soft (GB9/2). However, the translation along the RF axis is not independent of the translation along the modulus of elasticity axis for formulations containing NS. The possibility of independent translation along the two axes of the modulus of elasticity and the relative humidity is desirable for producing an even greater spectrum of rubber-elastic textures.

This becomes possible due to the nature and content of the NS, as shown in FIG. 10 of Applicants' specification. Increasing the NS content is expressed in a shift of the modulus of elasticity plateau to a higher modulus of elasticity, an increase in the NS content from 3% to 15%

raising the modulus of elasticity plateau by a factor of about 10, whereas the translation along the relative humidity axis is comparatively slight. Accordingly, the level of the modulus of elasticity plateau and the position of this plateau with respect to the relative humidity can be adjusted over a wide range to a desired value with the parameters of plasticizer content and NS content. At the same time, the range where the logarithms of the moduli of elasticity decreases with relative humidity can also be fixed along both content parameter axes.

Even if, furthermore, the selected VS is varied, there still is a larger tolerance. However, these possibilities for variation relate not only to the course of the modulus of elasticity as an important characteristic quantity of the texture. The elongation capability is also adjustable, a high NS content generally reducing the elongation capability and a high degree of substitution of the VS increasing the elongation capability. Furthermore, the fracturing behavior with the available parameters from viscous to brittle and the tackiness from strongly tacky at low network densities to not tacky at high network densities as well as the transparency from opaque, in the case of the large homocrystallites or heterocrystallites, to transparent, in the case of small heterocrystallites, can also be adjusted. The size of the crystallites can be controlled in formulations not containing any NS by the degree of substitution of the VS and, in formulations containing, furthermore, NS, by the degree of polymerization of the NS and the crystallization kinetics.

The cited references alone or in combination fail to disclose or suggest each and every element of independent Claim 23. The cited references fail to disclose or suggest a candy having a starch matrix comprising a first starch comprising a modified starch having a DP<sub>n</sub> of more than 1000, wherein the modified starch is selected from the group consisting of acetylated starches, hydroxypropylated starches, hydroxyethylated starches, phosphorylated starches, acetylated distarch phosphates, hydroxypropylated distarch phosphates, hydroxyethylated distarch phosphates, phosphorylated distarch phosphates, acetylated distarch adipates, hydroxypropylated distarch adipates, hydroxyethylated distarch adipates, phosphorylated distarch adipates and combinations thereof as required by independent Claim 23.

Moreover, the cited references fail to even recognize the advantages, unexpected benefits and/or properties of a candy having a starch matrix in accordance with the present claims. For at least the reasons discussed above, Applicants respectfully submit that independent Claim 23,

along with the claims that depend from Claim 23, are novel, nonobvious and distinguishable from the cited references.

Accordingly, Applicants respectfully request that the rejection of the pending claims under 35 U.S.C. §103 be withdrawn.

Applicants further note that Claims 24-31 have been newly added. The new claims are fully supported in the specification, for example, at pages 17-19 (along with the canceled claims). Applicants respectfully submit that Claims 24-31 should be allowed.

For the foregoing reasons, Applicants respectfully request reconsideration of the above-identified patent application and earnestly solicit an early allowance of same. In the event there remains any impediment to allowance of the claims which could be clarified in a telephonic interview, the Examiner is respectfully requested to initiate such an interview with the undersigned.

Respectfully submitted,

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